



## THOUGHTS ON A FESTIVE OCCASION ABOUT THE SIXTH ANNIVERSARY OF THE CONSTITUTION OF UKRAINE

Most Ukrainians worked only three days last week. We have got accustomed to celebrating traditional "Soviet" holidays together with religious ones, therefore no one was surprised when the Monday after Whitsunday was announced as a day off. As for the holiday on Friday, 28 June, I heard many people wondering what we were celebrating. Well informed people would naturally have no difficulty giving the right answer: "Constitution Day". Yet many of them would still be unable to define what exactly there is to celebrate on this day.

To prove my point, let me cite some figures. According to the survey carried out by the Razumkov Centre sociological service\*, 43.3% of the population regard the Constitution Day not as a holiday but as a mere day off, while 10.4% believe this should be a working day. It means that the majority of Ukrainian citizens (53.7%) do not consider the Constitution Day to be a national holiday.

What about the other 46.3%? Every third (33.2%) thinks that 28 June is a usual official public holiday, and every tenth (10.1%) - that it really is a great occasion (the other 3% of respondents found this question hard to answer).

Of course, nobody expected the Constitution Day to be as popular a holiday as the New Year or the 8th of March (International Women's Day). Yet treating the above figures as an indicator of the citizen's attitude to the Fundamental Law of their state, to its significance for their lives, one would have to admit that every second countryman or countrywoman of ours is indifferent to it, to say the least.

Why is this so? Let us try to find out. Citizens value their constitution, primarily, because it formulates and guarantees their basic rights and freedoms. Our Constitution formulates them very distinctly and comprehensively - in this respect it meets all European democratic standards. Yet what about safeguarding these rights and freedoms?

The surveyors posed the following question to respondents: "Do you think the following rights and freedoms are fully exercised in Ukraine?" The response was rather pessimistic: 89.9% of citizens consider that the right to decent standards of living for them and their families is not observed; 80% of respondents said their right to health care is not respected; 78.5% of survey participants believe that their right to work and fair remuneration for their work is not fully realized; 78.2% think the same about their right to social protection; 74.7% - about their right to housing; 71.1% - about their right to education. In other words, the "constitutional majority" of citizens claim that their rights are violated.

According to sociological data, over the last year, which was comparatively favourable for Ukraine's economy, the financial situation of 10.1% of families has "noticeably deteriorated" while that of 18.7% of families has "slightly deteriorated". At the same time as few as 0.8% of families have "noticeably improved" their situation and 13.4% of families have "slightly improved" it.

One cannot deny these facts - this is the reality of our life. When the President states in his annual message to Parliament that 83.2% of Ukraine's population is below the subsistence level and that the poverty rate is 16.4%, when death rate is twice as high as the birth rate, what social right can one sensibly discuss?

The protection of other rights - civil and political - is also much of a problem. Can we consider the situation acceptable if our election campaigns and referenda regularly become a matter of concern for foreign countries, whom we call our strategic partners, and international organizations that we aspire to join? Our country's reputation has been tarnished by the "cassette scandal", unresolved murders of famous politicians and oppositional journalists.

Those who need more evidence can be referred to the annual reports prepared by the Supreme Rada Ombudswoman's Office "On Situation with the Protection of Human Rights and Freedoms in Ukraine", especially the pages describing the use of torture by law enforcement personnel. Under the circumstances, it is no wonder that over the last four years of the SR Ombudswoman's operation in Ukraine she has received complaints from over 200 thousand people.

Should we be surprised, then, that our citizens, to put it mildly, are not overenthusiastic about our Constitution Day? Probably, we should not, although the Constitution itself is not the problem. The most perfect legislation will remain merely a declaration on paper unless it is properly implemented and complied with, first of all by those vested with power.

There is another point to be made. Not only is the Constitution a set of norms and rules regulating civil rights and freedoms, but it is also a "general outline" of the system of power, whose effective and efficient functioning predetermines the realization and protection of such rights and freedoms. Here again the Constitution, or rather its implementation, leaves much to be desired.

It has repeatedly been said from various rostra that the system of the division of power among its three branches - the President, the Supreme Rada and the Cabinet of Ministers - as laid down in the Fundamental Law, is internally controversial, causing a permanent conflict among them. The government and the Rada are the weak links in this chain. Therefore, three prime ministers, on average, are changed over one presidential or parliamentary term, and Parliament is the whipping boy of the society and the President. There are other, minor, discrepancies and inconsistencies in the Constitution.

Could it have been different? I do not think it could, given the haste in which the Constitution was considered and passed. And this is only part of the problem. The "constitutional night" was the tip of the iceberg of an acute political confrontation about the Constitution letter and spirit. The leftist parliamentary majority of the time and the President, on the one hand, and the parliamentary rightists and centrists, on the other, would not agree on the most essential notions and principles of the Constitution. Neither party was ready to compromise. Besides, many MPs, irrespective of their ideology, were against the consolidation of presidential authority, which was what Leonid Kuchma demanded.

One should also bear in mind that it was 1996, not 2002. The social and economic situation was explosive: one single spark was enough to ignite social unrest. Add to this the struggle between the "Donetsk" and "Dnipropetrovsk" clans, miners' strikes and the Communists' victory in the Russian parliamentary election, with their high chances of winning the presidential election as well. "Pushing" hard for their versions of the Constitution, the opponents could put their country's stability at stake. Which they almost did when the President issued his Decree on referendum about the adoption of the Constitution. Fortunately, the deputies decided to stay in the parliamentary session hall overnight, and next morning, on 28 June, they adopted the Constitution, after which the President had to revoke his Decree.

Instead of being "a social agreement" the Constitution became a "peace treaty" in the conflict between different parts of the political elite. The price paid for the peace was the content of the Constitution. As for the people, they were left on the sidelines of the whole process, in spite of the organized "all-national discussion" of its drafts, and the established "voluntary support committees for the Constitution". This is the fault and the tragedy of the Constitution creators.

We can still argue whether in that situation it was better to adopt the Constitution without delay or wait until life in this country was back on track, sparing no effort in working to this end. Yet history knows no "ifs". The issue was high on the agenda, it was to be resolved immediately. Its being resolved in this, and not another way, was determined by the arrangement and interaction of the political forces of the moment.

However, over time, the flaws of the Constitution were growing ever more obvious. At first they were discussed with caution, later - more loudly and insistently. During the 1999 presidential elections, some of the candidates included the Constitution amendment into their political platforms. Furthermore, the election winner - incumbent President Leonid Kuchma supported the initiative of holding a referendum, in the course of which the majority of citizens, presumably, voted in favour of introducing the amendments whose meaning remained vague for most people.

With the referendum, the President, in fact, gave a start to a new phase in the debate about the Fundamental Law. The Constitution was no longer a taboo subject. Evidence of this is that after 1999 the President has issued no directives on celebrating the holiday. In 2001, on the fifth anniversary of the Constitution, on the President's directive, an academic conference was held, most of its presenters and participants discussing what should be changed in the Fundamental Law and how this should be done.

Today, just as six years ago, the major political players evaluate the Constitution from the standpoint of their own interests and aims. Thus, the main struggle is still ahead. Do Ukrainian citizens understand its essence or share an interest in it - that is the question. They seem more engaged in the current Football World Cup than in this struggle, although its outcome will affect each of us much more dramatically than Brazil's or Germany's winning the Cup.

I would like to conclude with John Locke's words: "It is impossible to believe that people could intend... to give one person or several persons an absolute despotic power over themselves or their property and to give a representative of this power the authority to exercise limitlessly his unlimited will over them." Despite its imperfectness, the Constitution of Ukraine does indeed enable the citizens to prove the truth of the English philosopher's words. Our future and the future of our Constitution depends on us as well.

\* The survey was conducted on 21-28 May 2002, 2015 respondents over 18 years of age were surveyed in all regions of Ukraine.

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